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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/728,697	12/01/2000	Timothy V. Stagg	54186USA4C.017	5522

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Attention: James J. Trussell  
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EXAMINER

MADSEN, ROBERT A

ART UNIT

PAPER NUMBER

1761

DATE MAILED: 09/25/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/728,697

Applicant(s)

STAGG ET AL.

Examiner

Robert Madsen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on June 6, 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-33,35-39 and 41-52 is/are pending in the application.
- 4a) Of the above claim(s) 34,40,53-55 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-33,35-39,41-52 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2& 2.5.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

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**DETAILED ACTION**

Applicant's election with traverse of claims 1-33,35-39, and 41-52, which includes the species election of food products in Paper No. 4 is acknowledged. The traversal is on the ground(s) that the species are not distinct since, for example, claim 34 recites "a plurality of products" and *could* include food products. This is not found persuasive because the method of packaging a food product and a method of packaging a plurality of "products" have acquired a separate status in the art, as shown by their different classification in Paper No. 3. Therefore, restriction for examination purposes as indicated is proper.

The requirement is still deemed proper and is therefore made FINAL.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in-

(1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effect under this subsection of a national application published under section 122(b) only if the international application designating the United States was published under Article 21(2)(a) of such treaty in the English language; or

(2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that a patent shall not be deemed filed in the United States for the purposes of this subsection based on the filing of an international application filed under the treaty defined in section 351(a).

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Claims 1,2,5,8,12,14,17,18,21,24,28,30,35,36 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Union Carbide (GB 923899).

Regarding claims 1,2,5,12,14,17,18,21,24,30,35,36 Page 1, lines 11-35, 63-86, Page 2, lines 20-30, Page 3, lines 30-52, Page 3, line 115 to Page 4, line 35, Figures.

Regarding claims 8 and 24, see Examples.

Claims 38,42,44,45,47,48,49,51,52 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Union Carbide (GB 923899).

Regarding claims 38,42,44,45,47,48,49,51,52 See Page 1, lines 1-86, Page 2, lines 20-30, Page 3, lines 30-52, Page 3, line 115 to Page 4, line 35, Figures.

Regarding claim 8, see Examples.

Claims 1,2,4,5,8,10,13,14,17,18,20,21,24,26,29,30,33,35, 36,38,39,42,44,45,47,48,51, and 52 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Snyder (US 2579443). See Column 1, lines 1-32, Column 2, line 27 to column 3 line 18, Figures.

Claims 1,5,14,17,21,30,33,35 and 36 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Hoshino et al. (US 3545161). See Column 1, lines 25-62.

Claims 38,39,45,47,49,50, and 51 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Hoshino et al. (US 3545161). See Column 1, lines 25-62, Column 2, line 55 to Column 3, line 42.

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Claims 1,2,4,5,8,10,13,14,16,17,18,20,21,24,26,29,30,32,35, 37, 38,41,42,44,45,47,48,51,52 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Riddell (US 4773541). See Column 1, line 19 to Column 2, line 25, Column 3, line 4 to Column 4, line 9, Figures.

Claims 1, 5,6,8-10,13,14,17, 21,22,24-26,29,30,33-35 are rejected under 35 U.S.C. 102(e) as being anticipated by Hodson et al. (US 6316036 B1)

Regarding claims 1, 5,6,8-10,13,14,17, 21,22,24-26,29,30,33-35 Hodson et al. teach a continuous tear-resistant food package (e.g. cheese) as recited in claims 33 and 35 that is made from a multi-layer film comprising PVDC as recited in claims 5, 6,21 and 22 (Column 2, line 67 to column 3, line 40) having a single tearable tape strip, as recited in claims 14 and 30 (see Figures 25-29), attached to the inner layer of the film, as recited in claims 8 and 24 (Column 2, lines 57-65), that is made of tensilized PP (i.e. OPP), as recited in claims 10 and 26 (Column 2, lines 10-12, Column 4, lines 16-20), and has a tab, as recited in claims 1, 17,13,29, and 30.

Regarding claims 9 and 25, Hodson et al. teach the tear strip is placed on the inner surface of the bag with ink/printing disposed on an outer most surface (Column 2, line 57 to column 3, line 28) wherein the strip does not obstruct viewing the indicia.

Claims 38,39, 45,47,48, and 52 are rejected under 35 U.S.C. 102(e) as being anticipated by Hodson et al. (US 6316036 B1).

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Hodson et al. teach providing a continuous tear-resistant food package (e.g. cheese) as recited in claim 39 that is made from a multi-layer film comprising PVDC as recited in claim 45, (Column 2, line 67 to column 3, line 40) having a single tearable tape strip, as recited in claim 47 (see Figures 25-29), attached to the inner layer of the film, as recited in claim 48 (Column 2, lines 57-65), and has a tab, as recited in claims 38 and 52.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3, 19, and 43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Riddell (US 4773541) as applied to claims 1,2,4,5,8,10,13,14,16,17,18,20,21,24,26,29,30,32,35, 37, 38,41,42,44,45,47,48,51,52 above.

Riddell teaches the film must a tear strength that is sufficiently low for opening yet provide a sufficient shipping and display stiffness and durability (Column 2, lines 6-17, but is silent in teaching a particular tear strength . However, to select any particular tear strength would have been an obvious result effective variable of the required shipping and display stiffness and durability since Riddell teaches the package must

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endure shipping and display, yet maintain a tear strength sufficiently for tearing with a tearable tape strip.

Claims 7 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hodson et al. (US 6316036 B1) as applied to claims 1, 5,6,8,10,13,14,17, 21,22,24,26,29,30,33-35 above.

Regarding claims 7 and 23, Hodson et al. teach the packaging may comprise multilayer films with PP and PE (Column 2, line 49-Column 3, line 28) and include PE in a first layer (Column 3, lines 19-28) Although Hodson et al. are silent in a *second* layer is PP, since Hodson et al. teach using both PP and PE in combination to form a multilayer film and PE in a first layer to select PP as a second layer would have been an obvious matter of design choice.

Claims 11 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hoshino et al. (US 3545161) as applied to claims 1,5,14,17,21,30,33,35 and 36 Hoshino above, further in view of Morris et al. (US 4781296).

Hoshino et al. teach a PVDC film with a tear tape strip of at least 8 mm (column 3, lines 44-47), but is silent in teaching tear tape strip that is reinforced strapping tape. Morris et al. teach reinforced strapping tape is a tear tape strip for use with non-woven synthetic films. Therefore, it would have been obvious to modify the tear strip of Hosino et al. and use a reinforced strapping tape as the tear tape strip since one would have

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been substituting one form of tear tape strip for another for the same purpose: tearing a non-woven synthetic film (Column 3, line 29 to Column 4, line 15).

Claims 15 and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Riddell (US 4773541), as applied to claims 1,2,4,5,8,10,13,16,17,18,20,21,24,26,29,32,35, and 37 above, further in view of Kim (US 5203634).

Riddell teaches a tearable tape strip applied to the interior surface of the film and guide tape strips applied to the exterior of the film (Column 1, lines 25-38). The tear tape strip serves as a central section that shears through opposing longitudinal edges, or guide tapes. However, Riddell is silent in teaching a tearable strip that is internally tearable mounted on *both* the exterior and interior of the film. Kim '634 teaches that applying a tearable strip to the interior of the film and the guides to the exterior of the film, like that which is taught by Riddell, results in manufacturing problems. Kim '634 teaches the problems are overcome by applying an internally tearable portion and guides on both the interior and exterior of a given container wall (Column 1, line 17 to column 2, line 53). Therefore, it would have been obvious to include an internally tearable tape strip with guide portions on both the exterior and interior of the film surface since it improves the manufacturing process and one would have been substituting one type of internally tearable tape strip design for another for the same purpose.



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Claim 46 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hodson et al. (US 6316036 B1) as applied to claims 38,39, 45,47,48, and 52 above.

Hodson et al. teach the packaging may comprise multilayer films with PP and PE. Although Hodson et al. are silent in teaching a *first* layer of PE and a *second* layer is PP, since Hodson et al. teach using both PP and PE in combination to form a multilayer film, to select any particular order of PE and PP in a multi-layer structure would have been an obvious matter of design choice.

### ***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-3, 5,8,10,12-14,16-19,21,24,26,28-30, 32, and 35 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1,5,6,9,11,14, 20-23 of U. S. Patent No. 6,354,739 in view of Riddell (US 4773541).

Regarding claims 1-3, 5, 10,12,13,14,17-19,21,26,29, and 30, '739 claims a container comprising a single tearable tape strip, as recited in claims 14 and 30, made

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of the same materials recited claims 10 and 26 (see '739 claim 12), is internally tearable as recited in claims 12 and 28('739 claim 9)has a pull tab as recited in claims 13 and 29, and is secured to the opening of the container (see '739 claims 9,14,20-23) to provide access to an enclosed region by pulling at a force of at least 5.1N, as recited in claims 1,3,17,and 19 of the present application.

Although Patent '739 claims that the container may be a bag or flexible ('739 claim 4) and the tearable tape strip is attached to a *flap* at the opening of a container ('739 claims 1 and 23) which is made from a tear resistant film (i.e. LLPE or LDPE) that is otherwise not cleanly tearable ('739 claims 1 and 5), Patent '739 fails to claim that the *entire* container is made from a continuous tear resistant film *per se* as recited in claims 1,2, 5,17, 18 and 21.

Riddell is relied on as evidence of various types of tear-resistant container materials (e.g. kraft paper and *polyethylene films*) that are compatible with a tearable made strip made from the same materials (i.e. reinforced tapes of '739 claim 12) as claimed by Patent '739, such as reinforced tapes ('739claim 12), (Column 1, line 19 to Column 2, line 25). Therefore, since Patent '739 claims a container *flap* made from polyethylene films that is torn with a tearable tape strip of reinforced tape *and* Riddell teach containers made from polyethylene films that are torn with a tearable tape strip of reinforced tape, it would have been obvious to modify the container of '739 and make the *entire* container from continuous polyethylene film since one would be substituting one known container material for another for the same purpose: open a container using a tearable tape strip, including reinforced tapes.

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Regarding claims 8 and 24, '739 claims the tape strip is adhered to either a first or second surface of a flap, as well as the first surface of the flap adhered to the container to close the container ('739 claim 1), or the tape strip is adhered to the inner surface as recited in claims 8 and 24.

Regarding claims 16 and 32, '739 claims the second surface comprise a cover tape opposite the tape strip ('739 claim 8), or a cover strip is placed on the opposite outer surface as recited in claims 16 and 32.

Regarding claim 35, '739 claims the container is bag, which would wrap around an article.

### ***Conclusion***


The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Pinchen et al. (US 6228458 B1), Narsutis et al. (US 5945145), Fenini (US 5411202), Gorrieri (US 5215249), and Kiyoshima et al. (JP 403289459 A) all teach food enclosed by continuous tear resistant films that utilize tearable tape strips for accessing the food. Marx (US 35204969) teaches tearable tape strips applied to overwraps made from continuous tear resistant films.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert Madsen whose telephone number is (703)305-0068. The examiner can normally be reached on 7:00AM-3:30PM M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (703)308-3959. The fax phone numbers for the organization where this application or proceeding is assigned are (703)872-9310 for regular communications and (703)872-9311 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0061.

Robert Madsen   
Examiner  
Art Unit 1761  
September 19, 2002

  
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